

HOUSE BILL REPORT

HB 2761

As Reported by House Committee On:
Judiciary

Title: An act relating to money laundering.

Brief Description: Expanding the types of property subject to seizure and forfeiture in money laundering provisions.

Sponsors: Representatives Springer, Rodne, Lantz, Williams and Moeller.

Brief History:

Committee Activity:

Judiciary: 1/25/06, 1/30/06 [DPS].

Brief Summary of Substitute Bill

- Expands the type of property that may be forfeited under the money laundering forfeiture statute.
- Allows law enforcement to seize personal property without prior judicial process when there is probable cause and an exception to the warrant requirement exists.
- Establishes defenses for innocent owners.
- Allows a claimant who substantially prevails in a forfeiture proceeding to collect reasonable attorney fees.
- Requires that forfeited property be used first to pay for victim restitution and allows the remainder to be used for general law enforcement purposes.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Lantz, Chair; Flannigan, Vice Chair; Williams, Vice Chair; Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Campbell, Kirby, Serben, Springer and Wood.

Staff: Trudes Tango (786-7384).

Background:

A. Money laundering

A person commits money laundering when he or she conducts or attempts to conduct a financial transaction involving the proceeds of specified unlawful activity and the person either: (a) knows the property is proceeds of specified unlawful activity; (b) knows that the transaction is designed to conceal or disguise the nature, location, source, ownership, or control of the proceeds and acts recklessly as to whether the property is proceeds; or (c) knows that the transaction is designed to avoid a transaction reporting requirement under federal law. Additional proof requirements are imposed if the case involves an attorney accepting a fee from a client or a case involving a bank and its employee.

"Financial transaction" is defined broadly and includes a purchase, sale, loan, pledge, gift, transfer, delivery, trade, or any other acquisition or disposition of property by whatever means effected. "Specified unlawful activity" means any class A or B felony, any offense listed as criminal profiteering, or any federal offense or offense committed in another state that is punishable by more than one year in prison.

B. Civil forfeiture

There are various statutes authorizing the government to seize and forfeit property because of the property's connection with specific offenses. In most forfeiture statutes, a conviction is not a prerequisite for civil forfeiture.

Proceeds traceable to or derived from specified unlawful activity or from money laundering are subject to seizure and forfeiture. "Proceeds" means any interest in property directly or indirectly acquired through or derived from an act or omission and any fruits of this interest, in whatever form. "Property" means anything of value, whether real or personal, tangible or intangible.

Real property may only be seized upon process issued by a superior court. Forfeiture proceedings for real property are always judicial, as opposed to administrative.

Prior judicial action is not always necessary for the seizure of personal property. Law enforcement may seize personal property without prior judicial process if: (a) the seizure is incident to an arrest or a valid search; or (b) the property subject to seizure was the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding.

Once the property is seized, the forfeiture proceeding is considered commenced. The law enforcement agency must provide notice of the seizure and intended forfeiture to the owner and any person with a known right or interest, including a community property interest.

If no person notifies the agency of a claim of right or interest in the property within a specified time after notice is given (45 days for personal property, 90 days for real property), the property is deemed forfeited.

If a person notifies the agency of an interest in the seized property, the person must be given a reasonable opportunity to be heard. For personal property, the hearing is generally before the chief law enforcement officer of the seizing agency or an administrative law judge. However,

the person may elect to remove the case to court. The seizing agency has the burden of proof to establish by a preponderance of the evidence that the property is subject to forfeiture.

In addition to commencing a forfeiture proceeding by actual seizure, a proceeding may be commenced by filing a civil action in court. Only the attorney general or county prosecutor may file a civil action in court for forfeiture.

The seizing law enforcement agency must remit 10 percent of the net proceeds of any property forfeited annually to the state treasurer.

Washington's drug laws also allow for civil forfeiture of real and personal property associated with illegal drug activity. Those laws contain provisions for, among other things, notice to parties with a security interest in seized property, protections for innocent owners, and attorneys' fees for a party who substantially prevails in a forfeiture proceeding.

Summary of Substitute Bill:

The kinds of property subject to seizure and forfeiture under the money laundering statute is expanded to include any property that is involved in a transaction or attempted transaction of money laundering, not just proceeds.

The entities who may file an action for forfeiture is expanded to include law enforcement agencies.

Law enforcement may seize personal property without court process if the officer has probable cause to believe that the property is forfeitable and an exception to the constitutional search warrant requirements would apply.

Defenses are established for innocent owners. For a person who had an interest in the property at the time the conduct giving rise to the forfeiture occurred, that interest may not be forfeited if the person shows by a preponderance of the evidence that he or she did not know or consent to the conduct.

For a person who acquired an interest in the property after the conduct giving rise to the forfeiture occurred, that person's interest may not be forfeited if the person shows by a preponderance of the evidence that he or she was a bona fide purchaser or seller of goods or services and did not know and was reasonably without cause to believe that the property was subject to forfeiture.

For a party with a security interest, the forfeiture of property is subject to that security interest if the secured party shows by a preponderance of the evidence that the security interest is a bona fide security interest and the secured party, at the time the security interest was created, did not know of the acts or omissions that were the basis for the forfeiture.

A claimant who substantially prevails in a forfeiture proceeding is entitled to reasonable attorneys' fees reasonably incurred. In a court hearing where two or more claimants are involved, the prevailing party is entitled to costs and reasonable attorney fees.

Forfeited property shall be used first to pay victim restitution, and that amount shall be deducted in determining the net proceeds for purposes of depositing 10 percent to the state. Forfeited property retained by the agency shall be used for general law enforcement purposes, rather than for enforcement of just the drug laws.

Notice provisions are established for parties with perfected security interests in the seized property. Forfeiture proceedings removed from an administrative hearing to court shall be conducted under civil court rules.

Substitute Bill Compared to Original Bill:

The substitute: (a) removed the requirement that the court forward a forfeiture order of real property to the county assessor; and (b) requires that for cases where there is a criminal sentence requiring victim restitution, the restitution from forfeiture proceeds go through the registry of the court.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: This bill empowers local law enforcement to initiate forfeiture proceedings and saves time and money. The proceeds should go to the victims first. Since the law was enacted it has not been used often, but there are deficiencies that need to be corrected. This is really a clean-up bill. The current law has no innocent owner defense or provision for attorney fees. This bill makes money laundering forfeiture more parallel to the drug forfeiture statute. This bill is a collaborative effort between the defense bar and the King County Prosecutor's office. The victim restitution should go through the registry of the court like other legal financial obligations. The language about county assessor's should be deleted since assessors have no use for court orders regarding forfeited real property.

Testimony Against: None.

Persons Testifying: Representative Larry Springer, prime sponsor; Richard Truberman, Washington Association of Criminal Defense Lawyers; Tom McBride, Washington Association of Prosecuting Attorneys; and Debbie Wilke, Washington Association of County Officials.

Persons Signed In To Testify But Not Testifying: None.